

## RESPONDENTS.

2. Denied to the extent that Respondent Michael Hitrinov does not have a principal place of business, otherwise admitted.
3. Denied to the extent that “closely held” is not a legal entity description and therefore de-

nied, otherwise Respondents admit the allegations in Paragraph 2 of the Complaint.

4. Denied to the extent that EUL also provides services as an ocean transportation intermediary as a licensed ocean freight forwarder, other Respondents admit the allegations in Paragraph 4 of the Complaint.
5. Admitted To the extent that Respondent Michael Hitrinov is an officer of EUL, denied to the extent that "principal" is not a defined status under the Business Corporation Law of New York, and otherwise the allegations in Paragraph 5 of the Complaint are denied.
6. Denied to the extent that the operations are conducted by Respondent Hitrinov, admitted to the extent that Respondent Hitrinov supervises EUL's operations, otherwise denied.
7. Admitted.

### **III. Jurisdiction**

8. Denied except that it is admitted that the FMC has subject matter jurisdiction with respect to the Shipping Act of 1984, as amended.
9. Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 9 of the Complaint.
10. Admitted to the extent that EUL is licensed, *inter alia*, as a non-vessel-operating common carrier, denied to the extent that EUL performs other work that is not that of a non-vessel-operating common carrier within the meaning of the Shipping Act.

### **IV. Statement of Facts and Matters Complained of**

11. Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint, otherwise the allegations are denied.
12. Respondents admit that Complainant was a customer in the period in and prior to 2011, otherwise Respondents lack knowledge and information sufficient to form a belief as to

the truth of the allegations contained in Paragraph 12 of the Complaint, including but not limited to allegations as to multiple Complainants, or the number or value of vehicles involved in Complainant's Complaint.

13. Respondents admit that Complainant was a customer in the period in and prior to 2011, otherwise lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint, although they have requested copies of the alleged audit and have been refused.
14. Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint, although they have requested information about the specific shipments complained of and have been refused, otherwise the allegations are denied to the extent that they allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations..
15. Denied to the extent that the allegations in Paragraph 15 of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations; Respondents admit that Complainant was a customer in the period 2009 - 2011; otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint.
16. Denied to the extent that the allegations in Paragraph 16 of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations; Respondents admit that Complainant was a customer in the period 2009 - 2011; otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint.
17. Respondents that Complainant was a customer in and prior to 2011; otherwise lack knowledge and information sufficient to form a belief as to the truth of the allegations

contained in Paragraph 17 of the Complaint, although they have requested copies of the alleged audit and have been refused, otherwise the allegations are denied.

18. Denied.

19. Denied to the extent that the allegations in Paragraph 19 of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations, otherwise Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint.

20. Admitted to the extent that EUL lawfully exercised its contractual, maritime and creditor rights, otherwise denied to the extent that the allegations in Paragraph 20 of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations, otherwise Respondents admit that Complainant was a customer in and prior to 2011; otherwise Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint.

21. Denied to the extent that the allegations in Paragraph 21 of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations, otherwise Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint.

#### **V. Violations of the Shipping Act**

A. Denied to the extent that the allegations in Section V., paragraph A of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations, otherwise Respondents lack knowledge and information suffi-

cient to form a belief as to the truth of the allegations contained in Section V., paragraph A of the Complaint.

- B. Denied to the extent that the allegations in Section V., paragraph A of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations, otherwise Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Section V., paragraph A of the Complaint.
- C. . Denied to the extent that the allegations in Section V., paragraph C of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations, otherwise Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Section V., paragraph C of the Complaint.
- D. Denied to the extent that the allegations in Section V., paragraph A of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations, otherwise Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Section V., paragraph A of the Complaint.

## **VI. Injury to Complainant**

- A. Denied to the extent that the allegations in Section VI., paragraph A of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations, otherwise Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Section VI., paragraph A of the Complaint.

Respondents deny each and every allegation of the Complaint not specifically and expressly admitted herein.

## **VII. Affirmative Defenses**

Respondents hereby claim, assert and state the following affirmative defenses:

- accord and satisfaction, to wit, the Settlement Agreement and Mutual Release (attached) entered into among Baltic Auto Shipping, Inc., Michael Hitrinov, a/k/a Michael Khitrinov, and Empire United Lines, Co., Inc, dated 11/29/2011 ; reopened *sub nom. Empire United Lines et al. v. Baltic Auto Shipping, Inc.*, (DNJ) 15 cv 355 (CCC) (MF) to enforce Settlement Agreement and Mutual Release (1/20/2015);
- estoppel, to wit the Settlement Agreement and Mutual Release entered into among Baltic Auto Shipping, Inc., Michael Hitrinov, a/k/a Michael Khitrinov, and Empire United Lines, Co., Inc, dated 11/29/2011 ; reopened *sub nom. Empire United Lines et al. v. Baltic Auto Shipping, Inc.*, (DNJ) 15 cv 355 (CCC) (MF) to enforce Settlement Agreement and Mutual Release (1/20/2015) and Stipulation of Dismissal, with prejudice and Order of Dismissal, with prejudice (attached) of the U.S. District Court for the District of New Jersey, in the matter of *Baltic Auto Shipping, Inc. v. Michael Hitrinov, a/k/a Michael Khitrinov, and Empire United Lines, Co., Inc. et al*, Docket number 11 cv 6908 (FSH) (PS); reopened *sub nom. Empire United Lines et al. v. Baltic Auto Shipping, Inc.*, (DNJ) 15 cv 355 (CCC) (MF) to enforce Stipulation of Dismissal, with prejudice and Order of Dismissal (1/20/2015);
- laches, to wit the Complainant's alleged "discovery" of alleged Shipping Act violations occurred in January 2012, but the Complaint in this Proceeding was not filed until late November 2014;
- release, to wit the Settlement Agreement and Mutual Release entered into among Baltic Auto Shipping, Inc., Michael Hitrinov, a/k/a Michael Khitrinov, and Empire United Lines, Co., Inc, dated 11/29/2011 ; reopened *sub nom. Empire United Lines et al. v. Baltic Auto Shipping, Inc.*,

(DNJ) 15 cv 355 (CCC) (MF) to enforce Settlement Agreement and Mutual Release (1/20/2015)

- res judicata, to wit, Stipulation of Dismissal, with prejudice and Order of Dismissal, with prejudice of the U.S. District Court for the District of New Jersey, in the matter of *Baltic Auto Shipping, Inc. v. Michael Hitrinov, a/k/a Michael Khitrinov, and Empire United Lines, Co., Inc. et al*, Docket number 11 cv 6908 (FSH) (PS); reopened *sub nom. Empire United Lines et al. v. Baltic Auto Shipping, Inc.*, (DNJ) 15 cv 355 (CCC) (MF) to enforce Stipulation of Dismissal, with prejudice and Order of Dismissal (1/20/2015);
- Stipulation of Dismissal, with prejudice and Order of Dismissal, with prejudice of the U.S. District Court for the District of New Jersey, in the matter of *Baltic Auto Shipping, Inc. v. Michael Hitrinov, a/k/a Michael Khitrinov, and Empire United Lines, Co., Inc. et al*, Docket number 11 cv 6908 (FSH) (PS); reopened *sub nom. Empire United Lines et al. v. Baltic Auto Shipping, Inc.*, (DNJ) 15 cv 355 (CCC) (MF) to enforce Stipulation of Dismissal, with prejudice and Order of Dismissal (1/20/2015)
- statute of limitations, to wit the last of Complainant's bookings were made more than three years before the filing of the Complaint in this Proceeding;
- failure to state a claim upon which relief may be granted, to wit, when it paid freight charges the charges had been assessed as mutually agreed, along with the affirmative defenses hereinbefore claimed.

**COUNTERCLAIM FOR UNPAID CHARGES IN VIOLATION OF THE SHIPPING ACT, 46 USC 41102 (a) (1) (SECTION 10 (a) (1)) – COMPLAINANT HAS UNJUSTLY AND IN BAD FAITH OBTAINED OCEAN TRANSPORTATION FOR PROPERTY AT LESS THAN THE RATES AND CHARGES THAT WOULD OTHERWISE APPLY AND INDUCED RESPONDENT EMPIRE UNITED LINES CO., INC. TO RELINQUISH ITS POSSESSORY LIEN WITHOUT PAYMENT OF THE APPLICABLE FREIGHT CHARGES**

Respondent **Empire United Lines, Co., Inc.** ("Respondent EUL"), whose address is 2303 Con-  
ney island Avenue, Brooklyn, NY 11222, [Michael@eulines.com](mailto:Michael@eulines.com) by its attorneys, The Law Of-  
fice of Doyle & Doyle, as and for its Counterclaim against the Complainant herein, alleges on  
information and belief as follows:

1. Respondent EUL makes this Counterclaim to the extent that the Federal Maritime Com-  
mission sets aside or otherwise finds that the Settlement Agreement and Mutual Release  
and/or Stipulation of Dismissal, with prejudice and Order of Dismissal with prejudice de-  
scribed above, do not bar Complainant's claims in this Proceeding.
2. In the course of their business relationship Complainant and Respondent EUL agreed up-  
on the freight charges to be assessed for the transportation Complainant's property.
3. All shipments made by Complainant with Respondent EUL were rated and charged the  
agreed upon rates.
4. In late 2011 Complainant, in bad faith instituted a lawsuit against Respondent EUL and  
others, alleging violations of the Shipping Act in order to force Respondent EUL to  
waive the possessory lien Respondent EUL was asserting on Complainant's cargo.
5. In response to such abuse of legal process, Respondent EUL agreed to a settlement of  
claims and released its lien.
6. Upon a review of its available books and records in connection with responding to Com-  
plainant's Complaint herein, Respondent EUL has concluded that Complainant has failed  
to pay for a number of shipments.



7. On information and belief, Complainant has failed to pay approximately \$200,000.00 in freight charges duly owing to Respondent EUL.
8. Avoiding paying freight charges by using the unjust tactic of filing a meritless Complaint in Federal Court is the bad faith sufficient to justify this Counterclaim.
9. Complainant has unjustly obtained transportation without paying the applicable charges is a violation of the Shipping Act – specifically Section 10 (a) (1) (46 USC 41102 (a)(1)) - to the detriment of the Respondent EUL, and damaged the respondent in an amount that can only be determined after obtaining discovery in regard to the shipments for which no payment was received.

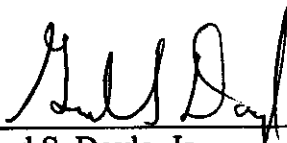
#### **Respondents' Prayer for Relief**

**WHEREFORE**, Respondents pray that:

1. The Complainant takes nothing by way of this action;
2. The Complaint be dismissed, with prejudice;
3. The Respondent EUL be awarded recompense for the full value of the wrongfully unpaid shipping charges;
4. Respondents be awarded costs of suit, attorneys' fees and any other relief which the Federal Maritime Commission deems just and proper.

Respectfully submitted,

By:

  
Gerard S. Doyle, Jr.

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**Michael Hitrinov, a/k/a**  
**Michael Khitrinov, and**  
**Empire United Lines, Co., Inc.**

Dated in Short Hills, NJ this 23<sup>rd</sup> day of January 2015.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the ANSWER AND COUNTERCLAIM OF RESPONDENTS MICHAEL HITRINOV AND EMPIRE UNITED LINES CO., INC. upon Complainant's counsel, Marcus A. Nussbaum, Esq., with the address of P.O. Box 245599, Brooklyn, NY 11224 by first class mail, postage prepaid, by fax (347-572-0439) and by email ([macus.nussbaum@gmail.com](mailto:macus.nussbaum@gmail.com)); and that the original and five (5) copies are being filed with the Secretary of the Federal Maritime Commission.



Gerard S. Doyle, Jr.

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**Michael Khitrinov, and**  
**Empire United Lines, Co., Inc.**

Dated in Short Hills, NJ. this 23<sup>rd</sup> day of January, 2015.